IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.775 OF 1989

1.Sara Rauf
aged 69 years,
Occupation Housewife ..

2.Joe Shera Rauf
age about 30 years,
Occupation Business,
Both residing at No.6,
Church Road, Pune 411 001 .. Petitioners.

Vs.

1.Durgashankar Ganeshlal Shroff
since deceased represented by LRs.
1(a) Smt.Shantabai Durgashankar
Shroff, residing at No.6,
Church Road, Pune 411 001. ..

1(b) Shri Kanakraj Durgashankar
Shroff, res.597, Sachapir Street,
Bungalow A, Pune Camp - 411 001 ..

1(c) Shri Dilip Durgashankar
Shroff, res.597, Sachapir Street,
Bungalow B, Pune Camp -411 001 ..

1(c) Shri Umesh Durgashankar
Shroff, res.1420, Bhimpura Lane,
Pune Camp - 411 001. .. Respondents.

Mr.J.C.Satpute for the petitioners.
Mr.A.K.Abhyankar, senior counsel with Mr.Rajesh Patil and Mr.N.V.Mhatre i/b M/s.Divekar & Co. for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 13TH MARCH, 2007

ORAL JUDGMENT:

1. This writ petition under Article 227 of the Constitution of India is by the tenant against whom a

decree of ejectment has been passed on the ground available under section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act"). Both the courts below have concurrently held that the requirement of the premises by the respondent-landlord is reasonable and bonafide.

2. The respondent-landlord is the owner of a bungalow consisting of ground floor and first floor bearing CTS No.9 situate at Church Road, Pune. Both the floors consist of four rooms each (for short "the suit bunglow"). The petitioner-tenant is in possession of the first floor alongwith an attached balcony (for short "the suit premises"), whereas the respondent-landlord is in possession of the ground floor. The status of the petitioner as a protected tenant under the provisions of the Rent Act is not in dispute in the present petition. The monthly rent of the suit premises is Rs.55/-. It appears, initially, even the ground floor of the suit bungalow was also in possession of the tenant and the respondent-landlord has secured possession thereof by contesting a litigation in the court. Though, initially a suit was instituted by the respondent-landlord against the petitioner-tenant for eviction on the ground under section 13(1)(l) and 13(1)(g) of the Rent Act, the suit was decreed only on the ground under section

13(1)(g) holding that the requirement of the respondent-landlord is bonafide and reasonable. In the present writ petition we are, therefore, concerned only with this ground.

3. The suit was resisted by the tenant mainly on the ground that the requirement of the landlord is not reasonable and bonafide since he has several other properties which could be used for their residence. The reference to few such premises was also made in the written statement. It was also denied that the family of the respondent-landlord consisting of three or four couples with children, was living in a cramped manner on the ground floor of the suit bungalow. It was further stated that the respondent-landlord who owns several house properties suppressed the fact that he has been in possession of various other premises and, therefore, his requirement is not bonafide and reasonable.

4. I heard learned counsel for the parties for quite sometime and went through the impugned judgments and the records with their assistance. Mr.Satpute, learned counsel for the petitioner at the outset invited my attention to the judgment of the learned Single Judge of this Court in **Tarachand Hassaram Shamdasani Vs. Durgashankar Shroff and Others 2004**

(Supp.) Bombay C.R. 333 and submitted that the factual position of the landlord in this case and in the present writ petition as also the ground of eviction are in para materia. In Shamdasani's case the learned Single Judge has exposed the landlord nullifying his need of a residential premise. A reference to several premises in the possession of the landlord was made in the judgment holding that the respondent-landlord is not entitled for a decree in view of suppression of the facts that he is in possession of other premises capable of being utilised for residential purpose. Relying upon this judgment, Mr.Satpute submitted that it is clear, the landlord in the present case, has played the fraud on the court as well as the opposite party and such landlord should be non suited at any stage of the litigation. He submitted that the findings recorded by the learned Single Judge in Shamdasani's case are equally applicable to the present petitioner and on that ground alone this writ petition also deserves to be allowed. In support of this contention he placed heavy reliance upon the judgment of the Supreme Court in **S.P.Chenga Naidu Vs. Jagannath and others (1994) 1 SCC**. He further submitted that the findings recorded by the learned Single Judge in Shamdasani's case operate as a constructive res-judicata since the ground in both the petitions seeking decree of

eviction against the tenant, is one and the same though the tenants are different. In support of this contention he placed reliance upon the judgment of the Supreme Court in **The Workmen of Cochin Port Trust Vs. The Board of Trustees of Cochin Port Trust and Anr. AIR 1978 SC 1283** and in **Satyadhyan Ghosal and Others Vs. Smt.Deorjim Debi & Anr. AIR 1960 SC 941.** He further submitted that if I do not agree with the view expressed and observations made in Shamdasani's case the matter may be referred to the Division Bench. In support of this proposition he placed reliance upon the judgment of the Apex Court in **Bajranglal Agrawal & Others Vs. State of Bihar & Anr. 2000(10) SCC 518**. He then submitted that the subsequent events, brought on record by way of affidavits, may be taken into consideration, in view of the law laid down by the Supreme Court in several judgments and more particularly in **Badami Devi and Anr. Vs. Ambaja Raghavan (2001) 9 SCC 245, M/s.Variety Emporium Vs. V.R.M.Mohd. Ibrahim Naina AIR 1985 SC 207, Gulabbai Vs. Nalin Narsi Vora & Ors. AIR 1991 SC 1760 and Pasupuleti Venkateshwarlu Vs. The Motor & General Traders (1975) 1 SCC 770**. He submitted that the landlord has obtained possession of three more premises, other than the ground floor of the suit bungalow of almost equal area, during pendency of these proceedings and in view thereof the need of the

landlord does not survive.

5. Mr.Abhyankar, learned senior counsel for the respondents, to cut short the controversy, insofar as subsequent events to be taken into consideration are concerned, fairly stated that he has no objection for taking all the subsequent events, reflected in various affidavits including the affidavits filed by the landlord, into consideration for examining whether the need of the landlord still survives. Mr.Abhyankar submitted that it is impermissible for this court to look into the judgment of the learned Single Judge in Shamdasani's case though it could be looked at as precedent. He submitted that unless and until all the proceedings referred to by the learned Single Judge in Shamdasani's case are produced on record and/or tendered in the evidence in this proceedings it cannot be taken recourse to for any purpose whatsoever. The judgment of the learned Single Judge in Shamdasani's case is the judgment in personem and not judgment in rem and as such it is irrelevant in the present matter. In support of this proposition he placed reliance upon **Gulabrao M.Bhagat Vs. Bhagwan N.Bhagat. 2001 (3) BCR 484 and in Hanumant G.Shinde Vs. Vasant S.Bartakke 2005(2) BCR 404**. He submitted that combined reading of the provisions contained in section 40 to 44 of the Indian Evidence Act make it

impermissible to look into the judgment of the learned Single Judge. In the alternative he submitted that even if it is assumed that the said judgment can be looked into, it is of no avail to the petitioner in the instant writ petition since there is no suppression of facts in the present case. All the premises referred to in that judgment being available for the residential purpose were referred to and considered in the present case either by way of amendment and in the affidavits filed by the parties from time to time. In short, Mr.Abhyankar submitted that the respondent-landlord has not suppressed anything from this court which could have had an effect on the decision of this case. He then submitted that the requirement pleaded in the plaint is that of the plaintiff and his family members and considering the large number of members of the family and the passage of time, the need of the suit premises still survive. Lastly, he submitted that the concurrent findings recorded by the courts below in any case cannot be termed as perverse and, therefore, cannot be interfered with in the present writ petition under Article 227 of the Constitution of India. In support of this proposition he placed reliance on the judgment of the Supreme Court in **Chandavarkar Sita Ratna Rao AIR 1987 SC 117, India Pipe Fitting Co. Vs. Fakruddin M.A.Baker & Anr. (1977) 4 SCC 587**.

6. I would like to consider the first submission of Mr.Satpute based on the judgment of this court in Shamdasani's case. In that case the requirement of the very same landlord was under consideration before the learned Single Judge. In that case it was revealed that some material facts which were necessary for full, complete and effectual adjudication of the issue of bonafide and reasonable requirement were suppressed by the landlord with the purpose to gain advantage over the other side, namely, tenant and thereby he indulged in playing fraud on the court as well as on the opposite party. The learned Single Judge in paragraph 6 of the judgment has made reference to other premises which were capable of being utilised for the requirement pressed into service in the suit filed against the tenant. It appears from the observations made in paragraphs 8 and 9 that other premises which were allegedly suppressed, were capable of being utilised for the residential purpose. The learned Single Judge then proceeded to observe in paragraph 9 that the plaintiff (present landlord) failed to plead and also depose in his evidence about the ownership of other premises and they are not sufficient to satisfy his requirement and only when he pleads and proves all these material facts the courts would be able to adjudicate fully and

effectively as to whether the requirement pressed into service is bonafide and reasonable. The learned Single Judge has also made a categoric observation in paragraph 9, which is relevant for our purpose, that no substantive evidence was brought on record by the landlord that those premises were not in his possession. It was further observed that the landlord is owner of the other premises which could be used both for business as well as residence and since it was not disclosed either in pleadings or in evidence (examination-in-chief) the ground under section 13(1)(g) for eviction is unavailable to the landlord. Considering the suppression of material facts the learned Single Judge further held that the landlord who has not approached the court with clean hands, it will be a duty of the court to non suit such landlord with regard to the ground available under section 13(1)(g).

7. At the outset, in my opinion, this judgment is of no avail to the petitioner for simple reason that the suppression alleged in Shamdasani's case cannot be treated as suppression in the present case. As a matter of fact in the present case all the premises which were allegedly suppressed in Shamdasani's case were before the courts below and they were taken into consideration while decreeing the suit on the ground

available under section 13(1)(g). In my opinion, merely because in other proceeding, there was suppression by the very same landlord does not mean the observations made in those proceedings would apply with equal force in the present proceedings unless it is established that the landlord suppressed the material facts, which were necessary for full, complete and effectual adjudication of the issue of bonafide and reasonable requirement, in the present case also. I repeatedly asked Mr.Abhyankar, learned senior counsel for the respondent-landlord as to whether the landlord has obtained possession of the premises other than the following four premises referred to in paragraph 11 of the landlords affidavit dated 30.11.2002. His reply to my query was in negative and he submitted that even if one more premises, irrespective of its size, is proved to be in possession of the respondent-landlord he would not have any objection for allowing this petition. The four premises in possession of the landlord mentioned in paragraph 11 are as follows:

(a) House No.1420, Bimpura, Pune admeasuring 520 sq. ft. which was acquired from Mr.Nanwani.

(b) Bungalow bearing house no.597, Sachapir Street, Pune admeasuring 1098 acquired from Smt.Kerawala.

(c) Bungalow admeasuring 1098 sq. ft. acquired from Shri Ranade.

(d) The premises on the ground floor of the suit

bungalow.

8. Mr.Satpute, learned counsel for the petitioner in all fairness stated that to the tenant's knowledge the information furnished by the landlord in the affidavit dated 30th November, 2002 disclosing four premises in possession of the landlord seems to be correct. In other words, the landlord is not in possession of any more premises than what has been disclosed in the said affidavit. It is also not disputed that all the aforesaid premises, except the ground floor of the suit bungalow, though the decree was passed by the courts in the proceedings against the respective tenants, the landlord could not obtain physical possession thereof in view of the pendency of further proceedings. The tenant has not disputed that on the date of filing of the suit and recording of the evidence of the landlord all the aforesaid premises, except the ground floor of the suit bungalow, were not in possession of the landlord and hence were capable of being utilised for the requirement pressed into service in the instant proceedings. It is now well settled that it is a duty of the landlord to disclose in the pleadings or in his evidence the fact that he owns other premises which are capable of being utilised for the requirement pressed into service in suit filed against tenant and to further disclose and

explain that inspite of this acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke the ground available under section 13(1)(g) and would succeed in establishing the need as bonafide and reasonable.

9. Looking at the overall facts, it is not even the case of the petitioner-tenant, that all four premises mentioned in the affidavit dated 30th November, 2002 were in fact capable of being utilised for the residential purpose when the suit was filed and until the first appeal was, finally decided. In fact, it is clear from the observations made by the courts below that these premises were not available for occupation and were involved in the litigation. It is true, that the duty of the court is to see whether, in the facts and circumstances of the case, landlord has obtained the decree by playing fraud on the court. Similarly, to see whether a litigant who comes to the court, must come with clean hands and if his case is based on falsehood, he has no right to seek any relief from the court or even to approach the court as observed by the Supreme Court in **S.P.Chengal Varaya Naidu's** (supra). In the facts and circumstances of the case in hand, it cannot be said

that the decree was obtained by fraud on the court.

10. For the purpose of determining whether the requirement of the landlord of the premises in question is reasonable and bonafide what is necessary to be considered is not whether the landlord has juridically in possession of other premises, but, whether they were available to him for occupation so that he cannot be said to be in need of the premises in question. Merely because the landlord is the owner of other premises in possession of other tenants and are not capable of being utilised for the requirement pressed into service such premises cannot be taken into account for negativing the need of the landlord for the premises in question.

11. Admittedly, except the aforesaid premises, mentioned in the affidavit dated 30th November, 2002, the landlord is not in possession of any other premises though he may be owner of several other premises. The other premises, if are not capable of being utilised for the requirement pressed into service cannot be taken into account while considering the need of landlord. It is against this backdrop it cannot be said, atleast in the present proceedings, that there was any suppression as observed by the learned Single Judge in Shamdasani’s case against the

very same landlord against the backdrop of the facts of that case.

12. Mr.Satpute, learned counsel for the petitioner then placed reliance upon the judgment of the Supreme Court in **S.P.Chengal Varaya Naidu's** (supra) and further submitted that the findings recorded by the learned Single Judge in Shamdasani's case operate as res-judicata since the ground pressed into service for ejectment in both the petitions is one and the same though the tenants are different.

13. The principle of res-judicata by now is well settled in a catena of decisions of the Supreme Court and High Courts. It is based on the need of giving finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. The principle of res-judicata is based on three maxims (a) nemo debet lis uexari pro una et eaden causa (no man should be vexed twice for the same cause); (b) interest republicae ut sit finis litium (it is in the state's interest that there should be an end to a litigation); and (c) res judicata pro veritate occipitur (a judicial decision must be accepted as correct).

14. For application of the principle of res judicata the following conditions are required to be satisfied (i) the matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit, (ii) the former suit must have been a suit between the same parties or between parties under whom they or any of them claim, (iii) such parties must have been litigating under the same title in the former suit, (iv) the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit. The Supreme Court in **The Workmen of Cochin Port Trust** (supra) has reiterated the aforesaid well settled principle of res judicata. Similarly, in **Satyadhyan Ghosal and Others** (supra) the Supreme Court held that W<u>hen a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again</u>. The Supreme Court further observed that the principle of res judicata could be applied by the courts for the purpose of achieving finality in the litigation.

15. In the present case a very basic condition that the former suit must have been a suit between the same parties or between parties under whom they or any of them claim, does not stand satisfied, besides such parties must have been litigating under the same title in the former suit. It is not the case that the tenant in the present suit has been vexed twice for the same cause or there was end to litigation earlier in respect of the subject matter and against the tenant merely because the former suit of the landlord for ejectment on the very same ground against the other tenant and in respect of some other premises attain finality.

16. The finding of facts arrived at on the evidence in Shamdasani's case cannot be the evidence of those facts in the present case. Such judgment may be used in evidence in certain circumstances, as a fact in issue or as a relevant fact, or possibly as a transaction, however, recitals in the judgment cannot be used as evidence in another case unless the parties are same. When and to what extent such judgment could be used was made clear by the Division Bench of this court in **Ramaji Vs. Manohar AIR 1961 Bombay 169**. The observations of the Division Bench in paragraph 11 are relevant. Paragraph 11 reads thus :

> "11. A judgment in another suit which is not inter partes may be evidence under section 13 of the Evidence Act for certain purposes, namely to prove the fact of the judgment; to show who the parties to the suit were; to show what was the subject matter of the suit; to show what was decided or declared by the judgment; to show what documents had been filed by the parties in the proceedings; to establish the transaction referred to in the judgment; as evidence to show the conduct of the parties or particular instances of the exercise of a right or assertion of title (vide Harihar Prasad Singh V. Must. of Munshi Nath Prasad), 1956 S.C.R. 1 at p.6 (S) A.I.R. 1956 S.C.305 at p.309 or to identify property; or to show how property had been previously dealt with; to establish a particular transaction in which a right is asserted and the name of the person, if any, who is declared in the judgment as entitled to possession; but the judgment is not evidence to establish the truth of the matters decided in that judgment. The findings of fact arrived at on the evidence in one case are not evidence of that fact in another case. The reasons upon which a judgment is founded cannot be regarded as, nor can any finding of fact there come to other than the transaction itself be, relevant in another case".
>
> (emphasis supplied)

. It is thus clear that the findings of fact recorded in Shamdasani’s case, dismissing his suit on the ground available under section 13(1)(g) will not apply with equal force in the present proceeding to non suit the landlord. Applying the principle of res judicata, in the present case, will amount to stretching the rule of "constructive res judicata" engrafted in explanation IV of section 11 of the Code of Civil Procedure too far to non suit the landlord in the present proceedings which is not permissible in

law.

17. In the absence of proper evidence led in this proceedings in support of the contention that the decree was obtained by fraud or by suppression of material facts which were necessary for proper and effective adjudication of the ground pressed into service for seeking possession, the decree cannot be refused to the landlord. The petitioner ought to have brought all such material which was referred to by the learned Single Judge in Shamdasani's case before this court in the present proceedings either by leading additional evidence and given an opportunity to the landlord to explain every circumstance on the basis of which the inference was drawn by the learned Single Judge. It is well settled that the reasons upon which such judgment is founded cannot be regarded as relevant in another case. Such judgment may be used in evidence in certain circumstances, as a fact in issue, or as a relevant fact, or possibly as a transaction, however, recitals in the judgment cannot be used as evidence in another case if the parties are not the same. That apart, in view of the findings recorded by me on the point of suppression and the alleged fraud played on the court, the submission that the finding of the learned Single Judge in Shamdasani's case would apply with equal force in the

present case must be rejected.

18. The question, therefore, arises for my consideration is whether the requirement of the landlord still survives even after obtaining possession of the premises mentioned in the affidavit dated 30th November, 2002 during pendency of this proceedings. However, before proceeding further I would like to make reference to the judgments relied upon by the learned counsel for the parties. Mr.Satpute has placed reliance upon the judgment of the Apex Court in **S.P. Chengal Naidu** (supra) wherein the Supreme Court has observed that one who comes to the court, must come with clean hands and that a person, who's case is based on falsehood, has no right to approach the court. In my opinion, this judgment is of no avail to the petitioner-tenant to gain advantage on the respondent-landlord. The next judgment in the **Workmen of Cochin Port Trust** (supra) was relied upon by the petitioner-tenant to contend that the findings recorded by the learned Single Judge in Shyamdasani's case operate res-judicata also is of no avail to the petitioner in view of the findings recorded by me in earlier paragraphs. Similarly, the judgment of the Supreme Court in **Bajranglal Agarwal and Others** (supra) is also of no avail to the petitioner since there is no question of disagreeing

with the views expressed by the learned Single Judge in Shamdasani's case. As a matter of fact the observations made by the learned Single Judge are based on the material before him and the facts of that case and, therefore, there is no need of making reference to larger bench as contended by Mr.Satpute, learned counsel for the petitioner.

19. The Supreme Court in **Om Prakash Gupta Vs. Ranbir B.Goyal (2002) 2 Supreme Court Cases 256** has observed that "the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights on the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In

Pasupuleti Venkateshwarlu V. Motor & General Traders the Supreme Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules or procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

20. The subsequent events may be one purely of law or founded on facts. In the former case, as observed by the Supreme Court in Om Prakash Gupta’s case, the

court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the Code of Civil Procedure. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. The Supreme Court in **Om Prakash Gupta's** case (supra) further proceeded to consider the judgment of a Full Bench of the Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in **Chhote Khan Vs. Mohd. Obedulla Khan. (AIR 1953 Nag 361)** Hidayatullah, J. (as His Lordship then was) held, "on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action. No doubt, courts "can" and sometimes "must" take notice of subsequent events, but that is done merely "inter partes" to shorten litigation but not to give to a

defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal." The Supreme Court has time and again expressed similar view before and after the judgment in Om Prakash Gupta's case (supra). In **Kedar Nath Agrawal Vs. Dhanraji Devi (2004) 8 Supreme Court Cases 76** has reiterated the aforesaid principle.

21. In view of the settled position of law, insofar as the subsequent events are concerned, in my opinion, if the parties to the litigation agree and/or do not object or give consent for bringing the subsequent events on record by way of an affidavit, there is no prohibition in allowing such subsequent events to be taken on record and consider them at any stage of the proceedings. In the present case by way of affidavits the petitioner-tenant has brought the subsequent events on record by both the sides. The petitioner-tenant and the respondent-landlord, both have filed the affidavits and counter affidavits for bringing subsequent events on record. The learned counsel for the parties have fairly consented to take the subsequent events, as reflected in the affidavits, into consideration for addressing the issue of

reasonable and bonafide requirement of the respondent-landlord.

22. The admitted facts as emerged from overall facts and circumstances of the case and the affidavits filed by the parties are as follows: During pendency of these proceedings the petitioner-tenant lost his parents and he alone is now residing in the suit premises, though he has stated that his brothers and other family members also have right in the premises. Admittedly, all others, who allegedly have right in the premises have settled abroad. As against this the number of members in the family of the respondent-landlord has increased to seventeen, consisting of the wife of the deceased - Durgashankar, three married sons, namely, Kanakraj, Dilip and Umesh and their spouses and children. Kanakraj has stated in the affidavit dated 30th November, 2002 that he has two sons of 20 years and 19 years old and Dilip has two sons and one daughter aged 17, 8 and 14 respectively whereas Umesh has three daughters and one son aged 13,9, 6 1/2 and 2 years. The ages of the children mentioned in the affidavit were as on 30.11.2002. During pendency of this proceedings, as stated earlier, the respondent-landlord received possession of three more premises apart from the ground floor of the suit bungalow as an outcome of the

litigations pending against the tenants in occupation of those premises. House no.597 at Sachapir Street, Pune has two rooms which were in possession of the respondent-landlord even earlier and were offered to the tenant and they being servant quarters the tenant had rejected the offer made by the landlord and submitted that the landlord can shift to these two rooms.

23. It reveals from the aforesaid admitted facts that the landlord's family consist of four independent units and out of them all the three sons have their families consisting of minimum four and maximum six members. The mother - Shantabai is an old lady. Keeping this in view, the question whether requirement of the landlord still survives will have to be examined. Admittedly, the premises, referred to in the affidavit dated 30.11.2002, were not in possession of the landlord pending hearing of the suit and the first appeal.

24. At this stage, it would be appropriate to make reference to the offer made by Mr.Abhyankar, learned senior counsel on behalf of the landlord that they are ready to offer rented premises bearing house no.1420 at Bhimpura, Pune admeasuring 520 sq. ft. to the petitioner-tenant so that the landlord would get

exclusive possession of the suit bungalow where atleast two units consisting of the old mother and a son with his family can stay in the suit bungalow. Considering the ages of all the members in the family of the landlord and at the same time the tenant being the only person who reside in the suit premises I think that this is a very reasonable offer and ought to have been accepted by the tenant. Mr.Satpute, learned counsel for the petitioner-tenant, however, stated that the petitioner-tenant was not agreeable to this proposal.

25. The respondent-landlord has set up a case that he was residing on the ground floor of the suit bungalow with his family members and when he filed the suit he had ten members in his family. He is also in possession of the same tenement as the petitioner-tenant is on the first floor of the suit bungalow and it consists of drawing room, one bedroom and one kitchen etc. In paragraph 7 of the plaint, the landlord has stated that he is in need of the suit premises reasonably and bonafide since the premises in his possession on the ground floor of the suit bungalow are insufficient for the use and occupation and needs of his family. He has further stated that two of his sons are married and separate arrangement of each of the son has to be made in view of the fact

that the women folk in the family were not keeping good relations. In my opinion, in the pleadings the landlord is not expected to give further details to prove his requirement of the suit premises. The facts as stated in paragraph 7 of the plaint give sufficient details. The further details were not necessary to be pleaded and they could be stated in the evidence, as landlord has done in the present case.

26. The landlord is the best judge of his residential requirement. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord, how, and in what manner he should live or to prescribe for him the residential standard of their own. There is no law which deprives the landlord of the benefits of his enjoyment of his property. Keeping this well settled position in law in view, in the present case, I find the requirement of the landlord is not only bonafide but reasonable. It is absolutely normal and reasonable for a big family like that of the landlords in the present case, as far as possible to stay together and more particularly when there is an old member in the family. It may also be noticed that the "suit bungalow" is the only premises available to the landlord, if he gets possession of the "suit premises" also, consisting of two independent flats, which can

accommodate two units consisting of one son with his family and mother with some attendant. The tenant, for the reasons best known to him, refused the offer made by the landlord to shift to the premises bearing house no.1420 at Bhimpura, Pune.

27. Mr.Satpute, learned counsel for the petitioner, though did not address on the point of comparative hardship, I found, the courts below have concurrently held that greater hardship would be caused to the landlord. I find no reason to take different view in the matter. In the circumstances the impugned judgments do not warrant interference by this court under Article 227 of the Constitution of India. In the result, the writ petition fails and dismissed as such. No costs.

28. At this stage Mr.Satpute, learned counsel for the petitioners prayed for stay to the execution of decree till the end of July, 2007. Mr.Abhyankar submits that the respondent-landlords have no objection for granting stay subject to the petitioners filing usual undertaking in this court. In view of the submissions of learned counsel for the parties I pass the following order:

. The petitioners are allowed to vacate the suit

premises on or before 31st July, 2007 subject to their filing usual undertaking in this court within four weeks from today failing which it will be open for the respondent-landlords to execute the decree. The filing of the undertaking, however, shall not curtail the right of the petitioners to challenge this judgment in the Supreme Court. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)